

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6860
Pertaining to Toxic Air Contaminants

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirements of Title 14 CCR section 15252 and Public Resources Code section 21080.5 pertaining to certified state regulatory programs under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION / PESTICIDE REGULATORY PROGRAM
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR section 6860. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to air monitoring and evaluation under its general reevaluation mandate and under the mandates of Assembly Bill 1807 (Chapter 1047, Statutes of 1983, and amended by Chapter 1380, Statutes of 1984, AB 3219), the Toxic Air Contaminant Act. In summary, this action would designate the pesticide chemical sulfuryl fluoride as toxic air contaminant (TAC) pursuant to Food and Agricultural Code (FAC) section 14023.

SPECIFIC PURPOSE AND FACTUAL BASIS

With the enactment of California's Toxic Air Contaminant Act, the Legislature created the statutory framework for the evaluation and control of chemicals as TACs. The statutes are contained in FAC sections 14021-14027. FAC section 14021 defines a TAC as "an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health."

DPR evaluates pesticides as TACs pursuant to FAC section 14022. FAC section 14022 requires the evaluations to be conducted in consultation with the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board. Upon completion of a pesticide evaluation, FAC section 14023(a) requires DPR, in consultation and with the participation of OEHHA, to prepare a report on the health effects of the pesticide due to airborne emissions resulting from its use. The report assesses the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report must include OEHHA's written findings. FAC section 14023(b) requires a review of the report by a panel of independent scientists known as the Scientific Review Panel (SRP). The SRP reviews the scientific data upon which the report is based, the supporting scientific procedures and methods used, and the conclusions and assessments on which the report is based. The SRP then submits its written findings to DPR. Based on the results of this comprehensive evaluation and review, the law requires the DPR Director to determine whether the candidate pesticide is a TAC. Title 3 CCR section 6890 provides the criteria the Director must use. If the candidate pesticide

is determined to be a TAC, FAC section 14023(d) requires the Director to list that pesticide as a TAC in regulation.

Sulfuryl fluoride is a colorless, odorless gas. The primary source of sulfuryl fluoride in the environment is from its use as a fumigant. Sulfuryl fluoride is used to fumigate sealed structures and their contents (construction materials, furnishings, and household effects), such as dwellings (including mobile homes), buildings, barns, vehicles, fumigation chambers, rail cars, and surface ships in port. It controls existing infestations of insects and related pests, such as drywood termites, powder post beetles, old house borers, death-watch beetles, bedbugs, cockroaches, clothes moths, rats, and mice.

After fumigation, sulfuryl fluoride in the air of a treated structure is immediately released into the atmosphere in the gaseous state. Once in the atmosphere, the fate of sulfuryl fluoride is unclear, since there are no available studies specifically on this subject. Based on limited relevant data, sulfuryl fluoride appears to have a long atmospheric lifetime, and therefore, should be considered a greenhouse gas.

DPR has conducted an evaluation and risk assessment of sulfuryl fluoride. It is contained in the draft report, "*Sulfuryl Fluoride (Vikane®) Risk Characterization Document*, June 2005." This report is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

The SRP has reviewed the sulfuryl fluoride report and submitted its written findings to DPR September 8, 2006. In its findings, the SRP concluded:

The Panel has reviewed the draft version of report "*Sulfuryl Fluoride (Vikane®) Risk Characterization Document*," prepared by DPR and reviewed by the Office of Environmental Health Hazard Assessment, as well as the scientific procedures and methods used to support the data, the data itself and the conclusions and assessments on which the report is based. The Panel has also reviewed and considered public comments, and agency responses to comments. The Panel concludes that the report, with the revisions specified by the SRP, is based upon sound scientific knowledge and represents a balanced assessment of our current scientific understanding.

The Panel recommends that the Director of DPR initiate regulatory steps to list sulfuryl fluoride as a Toxic Air Contaminant pursuant to FAC section 14023(d).

Based on the results of the evaluation of sulfuryl fluoride, the findings of the SRP, and the criteria listed in section 6890 for identifying pesticides as TACs, the Director has declared sulfuryl fluoride to be a TAC (DPR, 2006).

The proposed regulatory action adds sulfuryl fluoride to section 6860(a).

CONSULTATION WITH OTHER AGENCIES

As described above, DPR has consulted with OEHHA and the Air Resources Board. In addition, DPR has consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations as specified in FAC section 11454.2, and the February 6, 1992, Memorandum of Agreement which was developed as provided in section 11454.2.

Copies of correspondence with these agencies are contained in the rulemaking file.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2(b))

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

The proposal in effect pertains to designating the pesticide chemical sulfuryl fluoride as a TAC in section 6860(a). DPR's review of the proposed action showed that no significant adverse environmental effect to California's air, soil, water, plants, fish, or wildlife can reasonably be expected to occur from implementing the proposal. Therefore, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations.

DOCUMENTS RELIED UPON

1. DPR. 2005. *Sulfuryl Fluoride (Vikane®) Risk Characterization Document*. Department of Pesticide Regulation, Sacramento, California.
2. Froines, J.R. 2006. Findings of the *Scientific Review Panel on the Proposed Identification of Sulfuryl Fluoride as a Toxic Air Contaminant*. Findings of the Scientific Review Panel, John R. Froines, Ph.D., Chair. August 29, 2006.

3. DPR. 2006. *Notice of Proposed Decision Concerning the Director's Declaration of Sulfuryl Fluoride as Toxic Air Contaminants*. Mary-Ann Warmerdam, Director, Department of Pesticide Regulation. September 18, 2006.
4. OEHHA. 2005. Findings of the Active Ingredient: Sulfuryl Fluoride. Anna M. Fan, Office of Environmental Health Hazard Assessment. July 1, 2005.